REMARKS

Favorable reconsideration and allowance of this application are respectfully requested.

By way of the amendment instructions above, claim 1 has been revised so as to clarify that a crystalline synthetic resin composition comprises a crystalline synthetic resin and an effective amount of the phosphoric acid aromatic ester metal salt nucleating agent.

Claims 5-6 are new and depend directly or indirectly from the amended version of claim 1. New claims 5-6 define the amounts of the nucleating agent in the compositions.

Support for such amendments may be found throughout the specification as originally filed, for example, the penultimate paragraph on page 10 through page 11, as well as original claims 1-4.

Claims 1-6 therefore are pending in this application for which favorable reconsideration and allowance are requested.

A new title which is more commensurate with the claimed subject matter has been proposed.

I. Request to Acknowledge Applicants' Priority Claim

The Examiner has stated that "...the instant priority claim has *not* been granted." (Official Action at page 2, ¶1, emphasis added.) Applicants submit, however, that the claim for priority to JP 11/168864 filed on June 15, 1999 has in fact been statutorily perfected.

Applicants note that a certified English-language translation of a priority application is ***not*** required in order to perfect an applicants' claim for priority under 35 USC §119. Indeed, a certified English-language translation is not necessary except for the purposes identified in 37 CFR §1.55(a)(4)(i). In this particular instance, the subject application is neither involved in an interference nor has the Examiner "required" the submission of a certified English-language translation.

The submission of a certified English-language translation of the priority application would of course be in order so as to antedate a reference relied upon by the Examiner. As will be explained below, however, such antedating effect of the English-language translation is not needed in this particular instance.

Withdrawal or clarification of the Examiner's statement at page 2, ¶1 of the Official Action is therefore requested. Specifically, a formal acknowledgement that applicants' priority claim has been perfected (e.g., by completion of numbered form paragraph 12 on the PTOL-326 Office Action Summary) is requested.

II. Response to 35 USC §112 Issues

Reconsideration and withdrawal of the issues advanced against claims 1-4 under 35 USC §112, first and second paragraph is requested.

The claims as amended above now define a resin composition which comprises a crystalline synthetic resin and an effective amount of a nucleating agent. Hence, no "essential element" is omitted and, as such, the rejection advanced under 35 USC §112, second paragraph should be withdrawn.

The rejection advanced under 35 USC §112, first paragraph must also be withdrawn. In this regard, the amended version of the pending claims make it clear that the nucleating agent is for crystalline synthetic resins. More than ample disclosure and hence enablement exists in the originally filed specification to support such a claim

scope. As such, the issue here is not one of "enablement" under 35 USC §112, first paragraph, but instead is one of scope to be accorded to the applicants' claims for purpose of infringement. Withdrawal of the rejection advanced under 35 USC §112, first paragraph is therefore also in order.

III. Response to Art-Based Issues

A. Response to 35 USC §102(a) Rejections

Neither Takahashi et al '275 nor Nakamura et al '715 are appropriate references to reject claims 1-4 under 35 USC §102(a).

Applicants note that each of Takahashi et al '275 and Nakamura et al '715 have patenting dates which are *after* the filing date of the applicants' International Application PCT/JP00/03912 on June 15, 2000 which designated the United States. Since the subject application is the timely filed US national phase of the international application PCT/JP00/03912, it is statutorily entitled (35 USC §363) to the filing date in the United States of such international application – namely, June 15, 2000. Note also that an English-language translation of such international application has already been filed upon entry into the national phase in the US.

Therefore, neither Takahashi et al '275 nor Nakamura et al '715 is appropriate as a reference against claims 1-4 since neither was "patented or described in a printed publication in this or a foreign country" before the present invention.

Withdrawal of the rejection advanced under 35 USC §102(a) is therefore in order.

B. Response to 35 USC §102(b) Rejection

Claims 1-4 attracted a rejection under 35 USC §102(b) as allegedly being anticipated by Nakahara et al '113. Applicants respectfully disagree.

The Examiner's statement that preamble characteristics are given no patentable weight is perplexing. Specifically, the claims of the present application specifically require that the nucleating agent possess the following ***physical*** characteristics which are ***not*** expressions in the claim preamble:

- an average major-axis length of 10 μm or less;
- an average aspect ratio of 10 or less; and
- a bulk specific gravity of at least 0.1.

As described in the originally filed specification, the present applicants have discovered that having a relatively small average major-axis length and average aspect ratio and the required bulk specific gravity (e.g., which may be obtained by pulverizing crystals of the nucleating agent in the manner described), various important mechanical properties ensue when the nucleating agent is incorporated into a crystalline synthetic resin.

Nakamura et al '113 does ***not*** disclose or suggest such critical structural characteristics as defined in the present applicants' claims. Stated another way, while chemically the nucleating agents disclosed in Nakahara et al '113 and those defined in the applicants' claims may be similar, there is no disclosure in Nakahara et al '113 of pulverizing the nucleating agents to achieve the distinct ***physical*** characteristics as defined in applicants' claims.

As such, claims 1-4 are not anticipated by Nakamura et al '113 under 35 USC §102(b). Withdrawal of such rejection is therefore in order.

C. Response to 35 USC §103(a) Rejections

(i.) Nakamura et al '715

Claims 1-4 attracted a rejection under 35 USC §103(a) as allegedly "obvious", and hence unpatentable over Nakamura et al '715. Applicants emphatically disagree.

As noted previously, the claims of the present application specifically require that the nucleating agent possess the ***physical*** characteristics of ***an average major-axis length of 10 μm or less***, ***an average aspect ratio of 10 or less***, and ***a bulk specific gravity of at least 0.1***. These characteristics are not disclosed or even remotely suggested in Nakamura et al '715. Indeed, an ordinarily skilled person would not be directed to such critical attributes in view of the disclosure in Nakamura et al '715.

As demonstrated by the data in Tables 2-4, employing nucleating agents having the physical attributes as claimed results in resin compositions exhibiting decreased haze and greater flexural modulus characteristics. These characteristics could not be predicted at all from the disclosure of Nakamura et al '715. As such, withdrawal of the rejection advanced under 35 USC §103(a) is in order.

(ii.) Takahashi et al '275

Like Nakamura et al '715 discussed above, Takahashi et al '275 is completely silent with respect to the physical attributes of the nucleating agent as defined in the applicants' pending claims. As such, Takahashi et al '275 cannot render obvious the present invention under 35 USC §103(a).

Takahashi et al '275 also cannot properly be applied as a reference against the present claims since it is disqualified as a reference under 35 USC §103(c). In this regard, the present application and Takahashi et al '275 are commonly owned by Asahi Denka Kogyo KK as evidenced in the USPTO assignment records. See in this regard

the assignments recorded at Reel 010172 and Frame 0534 for Takahashi et al '275 and the assignments recorded at Reel 014820 and Frame 0128 for the subject application. And, as noted previously, Takahashi et al '275 rises to the status of prior art *only* under 35 USC §102(e).

Therefore, since the subject application was filed subsequent to November 29, 1999, the effective date of 35 USC §103(c), and since Takahashi et al '275 can only rise to "prior art" status against the subject invention under 35 USC §102(e), then 35 USC §103(c) disqualifies Takahashi et al '275 as a reference against the claims pending herein.

Withdrawal of the rejection of record under 35 USC §103(a) based on Takahashi et al '275 is therefore in order.

(iii.) Nakahara et al '113

The comments above in section III.B. are equally germane to the ***un***obviousness of the present claims in view of Nakahara et al '113. Specifically, there is no disclosure or suggestion in Nakahara et al '113 which would lead an ordinarily skilled person to the herein claimed physical attributes of the nucleating agent with the expectation that improved haze and flexural modulus characteristics would result.

Indeed, as noted in the accompanying Declaration of Mr. Tohru Haruna,[1] the nucleating agent employed in Comparative Example 1 of the present application is the same nucleating agent that was employed in Examples 1, 17, 28, 24, 39 and 46 of Nakahara et al '113. This direct comparison of nucleating agents therefore provides compelling evidence of the ***un***obviousness of the presently claimed invention over Nakahara et al '113.

[1] An unexecuted version of Mr. Haruna's Declaration is attached. The undersigned will file promptly the executed Declaration promptly upon receipt.

Withdrawal of the rejection advanced under 35 USC §103(a) based on Nakahara et al '113 is therefore in order.

IV. Conclusions

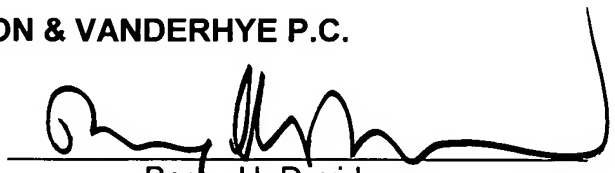
Every effort has been made to advance prosecution of this application to allowance. Therefore, in view of the amendments and remarks above, applicant suggests that all claims are in condition for allowance and Official Notice of the same is solicited.

Should any small matters remain outstanding, the Examiner is encouraged to telephone the Applicants' undersigned attorney so that the same may be resolved without the need for an additional written action and reply.

An early and favorable reply on the merits is awaited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

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